



FRAUD FACTS

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ABOUT *FRAUD FACTS*

Fraud Facts is published by the Air Force Deputy General Counsel (Contractor Responsibility) to present current information about selected fraud, suspension and debarment actions, and issues of interest. Many different agencies contribute to the investigation, prosecution, and completion of a case, including, but not limited to, the Air Force Office of Special Investigations, the Defense Criminal Investigative Service, and the Air Force JAG Corps. We thank you for your continued support and assistance in protecting the government's contracting interests.

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GAO REVIEWS DRUYUN CONTRACT PROTESTS

By Rodney A. Grandon, SAF/GCQ

In February 2005, the Government Accountability Office sustained two protests arising from Darleen Druyun's participation in two Air Force source selections: the Small Diameter Bomb (SDB) and the C-130 Avionics Modernization Program (AMP).

The GAO issued the SDB decision on February 18. Lockheed Martin Corporation had brought the protest challenging Ms. Druyun's participation in the source selection process leading up to the award of the SDB contract to The

Boeing Company. Factually, the GAO concluded that Ms. Druyun had been involved in decision making that culminated in changes to the technical requirements for the SDB, as well as the related evaluation factors—changes perceived by Lockheed Martin as favoring Boeing. Ms. Druyun's involvement occurred during the time she professed in her sentencing documents to have been "indebted" to Boeing (Boeing had hired members of her family). Ms. Druyun's involvement in those decisions was suf-

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\$62 MILLION SETTLEMENT

Northrop Grumman Corporation has agreed to pay the United States \$62 million to resolve allegations of overcharging the government by fraudulently accounting for materials purportedly used in multiple defense contracts and by fraudulently inflating the cost and misrepresenting the progress of a radar jamming device for the B-2 "Stealth" Bomber under an Air Force contract. Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, announced the settlement agreement on March 1, 2005. *United States ex rel. Robinson v. Northrop Grumman Corporation*. The settlement also provides

that all litigation related costs (as defined by FAR 31.205-47) incurred by Northrop Grumman are unallowable and must be separately accounted for by the company.

The 16 year old civil action was initiated by two whistleblowers in 1989, who will receive \$12.4 million, or approximately 20%, of the \$62 million settlement proceeds. In addition, the two whistleblowers, who were fired, sued Northrop

Grumman for employment discrimination in addition to the alleged False Claims Act violation. Their personal claims for retaliation and their claims for

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B-2 Spirit bomber over Kansas. (U.S. Air Force photo by Staff Sgt. Mark Olsen)

NOTES FROM THE DEPUTY GENERAL COUNSEL

By Steven A. Shaw, SAF/GCR

Contractor responsibility issues and, thus, GCR have received much media attention in recent months. The March 4th termination of the Boeing suspensions and related events make a good story, both for the Air Force and for one of its most important contractors. That story deserves repeating.

Over two years ago GCR wrote Boeing, inviting it to respond to allegations that it had misappropriated thousands of a competitor's proprietary documents, used them to gain an advantage in the 1998 EELV source selection competition, and misled the Air Force as to the scope of the wrongdoing over a period of years. Boeing's response to the allegations was not satisfactory, so the Air Force suspended Boeing's three space launch business units on July 23, 2003.

In the months following the suspensions Boeing has stepped up, and addressed all of the problems at issue aggressively. In addition to taking a large number of remedial measures, Boeing signed what many view as the toughest compliance agreement that has ever been entered against a government contractor. See Interim Administrative Agreement at <https://intranet.hq.af.mil/webfiles/safgc/susdeb.htm>.

The Agreement is worth reading. It details the numerous changes Boeing has made to its ethics and other business practices, and sets forth a number of procedures required by the Air Force to enable it to independently verify Boeing's compliance. An important feature of that verification is Boeing's agreement to engage General George Babbitt (ret. USAF), former Commander, Air Force Material Command, to monitor Boeing's operations, and to issue regular reports directly to the Air Force.

So why do I say that this long, sad tale makes a good story? It's good for the Air Force and its reputation for insisting that its contractors maintain high standards for integrity. Throughout this process, Air Force leadership courageously insisted on doing the right thing in this case, regardless of the consequences.

This also makes a good story for how an important contractor recognized a cultural problem, and made aggressive changes to the way it does business.

Thanks and congratulations, to the many Air Force JAGs, investigators, and contracting personnel who worked with us to make this the good story that it is.

RECENT DEBARMENTS

Bruce B. Dicey
CATIC (USA), Inc.
China National Aero-Technology Import and Export Corporation
China National Aero-Technology International Supply Company
Cooper Industries, Inc.
Darleen Druyun
DJ Power Cleaning
Hu Boru
Keith Shaw
Paul E. Nequette
Ralph Michael Cooper
Stewart S. Bushman
TAL Industries, Inc.
Wanda Johnson
Yan Liren

NON-CONFORMING PARTS RESULT IN JAIL TIME—Florida

On June 1, 2004, the Government the true origin of the O-rings Cooper Industries provided to the Air Force.

Ralph Michael Cooper, president of Cooper Industries, Inc., pled guilty to two counts of using false writings and documents. He was sentenced to imprisonment for 30 months, supervised release for 36 months, and ordered to pay restitution in the amount of \$56,932 and a special assessment of \$200. Cooper devised and executed a scheme to furnish non-conforming O-rings to the Air Force for use in Air Force aircrafts, which caused a potential safety of flight concern. Cooper also falsified documents to conceal from

On January 3, 2005, the Air Force debarred Cooper and Cooper Industries, pursuant to FAR 9.406-2(a)(1) and (5) and (c), which permits the Air Force to debar a contractor for improper conduct of so serious and compelling a nature that it affects its present responsibility to be a Government contractor or subcontractor. Special thanks to SAs Adam Calderon and James Scheel in Melbourne, Florida.

FRAUD REMEDIES BULLETINS

Previous Fraud Remedies Bulletins & Updates, insightful tools addressing pertinent contracting issues facing investigators and attorneys today, and *Fraud Facts* are published by SAF/GCR. Previous Bulletins, Updates, and *Fraud Facts* are available on SAF/GCR's websites, as listed on page 3 of this issue under Web Sources.



DoD FRAUD CONFERENCE

On March 1st and 2nd, 2005, the Air Force and the Army jointly hosted a Department of Defense Fraud Working Group Conference in Orlando, Florida. More than 80 participants attended the conference, and all the principal DoD departments and agencies were represented, as well as the Department of Justice. The conference participants discussed a wide variety of topics relevant to fraud investigations, prosecutions, and civil actions, and contract and administrative remedies, such as (i) sharing information; (ii) organizing inter-agency task forces to prosecute specific cases and contractors; (iii) coordinating investigations; and discussing (vi) the function of agency counsel in fraud cases; and (v) the role of suspension and debarment. There was lively discussion

of all of these topics. Although future conferences may use a more traditional format, this conference used a flexible format to allow and to encourage maximum participation of the attendees. The conference was a big success, and we expect that it will be an annual event providing an opportunity for investigators, contracting officers and lawyers to meet, network, and educate each other. To maintain momentum in this effort, a permanent planning committee will meet approximately every quarter to plan the annual conference, explore new initiatives, and deal with interim issues. We are especially interested in encouraging the attendance and participation of people from all disciplines investigators, contracting officers and lawyers—to maximize the benefits of the working group.

COURT DISMISSES CONTRACTOR'S SUIT AGAINST SAF/GCR—Georgia

Since 1996, the Air Force has imposed over 2,500 suspension and debarment actions. During that time only five contractors have filed suit against the Air Force, none successfully, as the Air Force has won each on dismissal or summary judgment. American Floor Consultants and Installations, Inc., a Georgia flooring and resurfacing contractor, is the latest contractor to unsuccessfully oppose its debarment in federal court. Its complaint was dismissed by the United States District Court for the Northern District of Georgia on March 8, 2005. *American Floor and Consultants, Inc. v. James G. Roche, et al.*

American Floor was awarded a Government contract to resurface hanger bays at Seymour Johnson Air Force Base, North Carolina. During performance of this contract, American Floor employed and made improper payments to the son of the Government contracting specialist who was administering the Seymour Johnson AFB hanger contract. The Air Force debarred American Floor and its owner, Clayton W. King, on December 31, 2001, for misconduct so serious or compelling as to affect their present responsibility to be Government contractors or subcontractors pursuant to FAR 9.406-2 (c). On March 17, 2004, American Floor sued the Air Force, Steven A. Shaw, the Air Force suspending and debarring official, and others in the United States District Court for the Northern District of Georgia, asserting claims under the Federal Tort Claims Act (FTCA) and state tort law. The FTCA waives the sovereign immunity of the United States, which allows plaintiffs to assert certain tort claims against the United States. American Floor's suit was unique, as it was the first complaint to name Mr. Shaw in his individual rather than his official capacity.

The plaintiffs alleged that they could not be debarred because of assurances made to them during the

investigation by an Air Force JAG attorney. The defendants asserted that any assurances were made without authority. On March 8, 2005, the District Court dismissed American Floor's suit against the Government and all individual defendants, including Mr. Shaw, for lack of personal jurisdiction. The claims against the Air Force

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WEB RESOURCES

SAF/GCR WEBSITES:

SAF/GCR

<http://afnet.safgc.hq.af.mil/safgcr.htm>

HAFDASH GCR

<https://intranet.hq.af.mil/webfiles/safgc/>

FLITE GCR

<https://aflsa.jag.af.mil/>

NEW SPECIAL FEATURES ON SAF/GCR WEBSITES

- Debarment Memoranda
- Administrative Agreements
- Archived Fraud Facts

ADDITIONAL WEBSITES:

Central Contractor Registration

<https://www.bpn.gov/CCR/scripts/index.html>

Defense Federal Acquisition Regulations

<http://www.acq.osd.mil/dpap/dars/dfars/index.htm>

Excluded Parties List System

<http://www.epls.gov/>

**Multiple other useful links may be found on the SAF/GCR websites.*



FORMER BOEING CFO SENTENCED

Michael M. Sears, the former Chief Financial Officer of the Boeing Company, was sentenced on February 18, 2005, in the United States District Court for the Eastern District of Virginia, to four months incarceration, a fine of \$250,000, and 200 hours of community service. Mr. Sears pled guilty on November 15, 2004, to aiding and abetting acts affecting a personal financial interest. From September 23, 2002, through November 5, 2002, Sears aided and abetted Darleen Druyun, then the Principal Deputy Assistant Secretary of the Air Force for Acquisition and Management, in negotiating employment with Boeing while she was participating personally and substantially as an Air Force official over-



seeing the negotiation of a significant Air Force contract. Boeing disclosed the evidence to GCR, and terminated Sears' employment on November 24, 2003.

GCR suspended Mr. Sears on February 9, 2004, and proposed him for debarment on March 18, 2005, based upon his conviction. The investigation was conducted by DCIS, DoD, AFOSI, and FBI. AUSA Robert W. Wiechering prosecuted the case for the United States.

For further information, see News Release, Department of Justice, United States Attorney for the Eastern District of Virginia (February 18, 2005) at

<http://www.usdoj.gov/usao/vae/ArchivePress/FebruaryPDFArchive/05/21804SearsSent.pdf>.

MEMORANDUM FOR ACQUISITION WORKFORCE ON ETHICS & INTEGRITY

On March 1, 2005, Michael Wynne, the acting Under Secretary of Defense, issued a memorandum addressing ethics and integrity in Government contracting. In the aftermath of the Darleen Druyun and Michael Sears events, Secretary Wynne used the brief two page memorandum to stress the importance of "Acquisition Excellence with Integrity," and the efforts undertaken to improve the acquisition process, as well as to address contract actions executed during Ms. Druyun's tenure as

Principal Deputy Assistant Secretary (Acquisition & Management).

Secretary Wynne notes that only by adhering to the highest ethics possible on a daily basis will the Government be able to restore and maintain the public's trust in the acquisition process. The memo closes with a reminder to acquisition personnel that "[w]e must maintain a zero tolerance to indiscretions [of ethical behavior]."

FISCAL 2006 DOD BUDGET RELEASE

President George W. Bush sent Congress his fiscal 2006 defense budget on February 7, 2005. It requests \$419.3 billion in discretionary budget authority for the Department of Defense, and represents a nearly five percent increase over fiscal 2005 funding levels.

Defense spending in fiscal 2006 is 41 percent above fiscal 2001. Military pay has increased about 25 percent. The fiscal budget includes a 3.1 percent increase in base pay, plus bonuses, and recruiting and retention programs to ensure the Defense Department maintains its professional fighting force.

"We are a nation at war," said Defense Secretary Donald Rumsfeld. "The President's budget, together with the supplemental spending proposals the President has made, provides the men and women in uniform what they need to prevail." The fiscal 2006 defense budget is posted at: <http://www.defenselink.mil/news/Feb2005/d20050207budget.pdf>.



NELLIS AIR FORCE BASE, NV. A pair of F-16 Fighting Falcons, assigned to the 27th Fighter Wing at Cannon Air Force Base, N.M., head out for a Joint Red Flag mission over the Nevada Test and Training Range. (U.S. Air Force photo by Tech. Sgt. Kevin J. Gruenwald)



EFFECTIVE ETHICS PROGRAMS: A CONTRACTOR'S PERSPECTIVE

By Maryanne Lavan, Vice President, Ethics and Business Conduct, & Brian Sears, Director, Ethics Awareness, Lockheed Martin Corporation

Recent headlines indicate that many of the ethical scandals of the past few years are being adjudicated, with executives going to prison and companies fined, suspended, or even debarred. These events have given the business community and the general public a renewed sense of the importance of establishing and maintaining effective ethics programs.

At Lockheed Martin, we believe that ethical business conduct is the right thing to do. At the same time, we know that ethics and, more specifically, unethical business practices, can have a significant impact to our business.

As a signatory to the Defense Industry Initiative, Lockheed Martin has "pledged to adopt and implement a set of principles of business ethics and conduct that acknowledge and express their federal-procurement-related corporate responsibilities to the Department of Defense, as well as to the public, the Government, and to each other." To fulfill this pledge, Lockheed Martin established the Office of Ethics and Business Conduct and a comprehensive ethics program that includes "traditional" elements such as a code of conduct, ethics officers, Helpline, awareness training, ethics surveys, communications, and compliance training. We also believe in continuous improvements to our ethics program by championing new initiatives such as the Ethics Film Festival, Ethics Tools for Leaders, the Chairman's Award for Ethics and Integrity, and our most recent project the Ethics Minute.

As do many entities with an ethics organization, Lockheed Martin strives to measure the effectiveness of our ethics program. We use various methods to gauge how well we are doing:

- **Ethics Surveys:** Every two years all employees are invited to participate in an ethics survey to provide their perspective on the corporation's commitment to ethics. Survey results are analyzed and action plans are developed in response to the findings.
- **Awareness Training Evaluation:** Each year, all Lockheed Martin employees participate in one hour of ethics awareness training. We receive thousands of participant evaluation forms that indicate the effectiveness of the training along with suggestions for improvement.
- **Ethics Activity Metrics:** We record all cases and requests for guidance in a centrally managed, secure ethics database. The resulting activity metrics enable us to identify potential trends and target areas where additional training or communications may be needed. For example, when we have a

high number of allegations in a particular category, or a significant increase in a category, we are able to develop targeted ethics awareness materials to heighten employee sensitivity to the issues involved.

- **Outreach Activities:** In addition to participation in DII, Lockheed Martin is active in the Ethics Officers Association and the Ethics Resource Center Fellows Program. Through these contacts and other channels, we have received literally hundreds of requests for program materials (e.g. awareness training modules) and provided speakers for association meetings, outside companies, and universities. We believe that continued interest in our program is a positive indicator of how the program is viewed outside the corporation.
- **Publicity:** Our program has been featured positively in various national and regional publications.

Even though by most measures Lockheed Martin's ethics program compares favorably to other companies' programs, we strive to keep advancing the ethics message and to continue developing new and innovative approaches to ethics awareness and communication. For example, our newest initiative, the Ethics Minute, involves a series of short video messages on a central ethics theme. Employees with an email account are invited to visit the Ethics Minute website and view a one-minute episode. The objective is to keep ethics awareness at a high level throughout the year via an engaging and interesting format. Regardless of how well we in the ethics profession *think* we are doing, what matters significantly more is how our *customers* think we are doing. Continued vigilance and attention to ethics and "doing the right thing" will, we believe, play an important role in the future success of our company.

CONTRIBUTING WRITERS

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ETHICS CORNER

Insider Trading

By Kerri Cox, SAF/GCA

Ethics counselors are often asked why Air Force employees are required to file financial disclosure forms. The Office of Government Ethics Confidential Form 450 (OGE 450) and the Public Financial Disclosure Standard Form 278 (SF 278) are tools used by supervisors and ethics counselors to perform a conflicts of interest analysis. The basic goal is to pinpoint potential conflicts of interest an Air Force employee may have between personal financial assets or relationships and official Air Force duties. The larger goal is to increase public confidence in a fair and impartial federal workforce. Every OGE 450 and SF 278 is carefully reviewed by an Air Force ethics counselor. The ethics counselor begins by comparing the employee's financial interests to the list of Department of Defense contractors. If an Air Force employee owns stock in a particular DOD contractor, the ethics counselor may prepare a letter cautioning the employee to refrain from taking any action or making any decisions that could affect the financial position of the outside entity.

However, ethics counselors are not the only individuals who can benefit

from using these lists. Conflicts of interest present serious issues under our standards of conduct, including criminal penalties which may result from taking certain actions involving contractors in which a financial interest exists. Comparing personal assets with the DOD contractor list will make Air Force employees more aware of the limits imposed by the financial assets they own. This will aid their official decision making. Anyone who is not sure whether they may have a conflict should seek advice from their ethics counselor.

All members of the Air Force community are welcome to review the contractor lists. DOD contractors with contracts exceeding \$25,000 can be viewed through <http://www.defenselink.mil/dodgc/>. Those interested in further breakdowns may review the top 50 Air Force contractors in addition to breakouts of parent companies, subsidiaries, and even the top 100 companies by categories of procurement at <http://www.dior.whs.mil/peidhome/procstat/p01/fy2004/top100.htm>.

ARTICLES & SPEECHES

ARTICLES

- Suspension & Debarment in a Nutshell
http://afnet.safgc.hq.af.mil/sd_shaw_nutshell.htm
- Suspension & Debarment: Emerging Issues in Law and Policy
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=509004

UPCOMING SPEECHES

- April 14, 2005: Steve Shaw will speak at the Crowell & Moring's Contracting Conference in Irvine, California.
- May 25, 2005: Steve Shaw will be a moderator at the Conference Board Business Ethics Conference in New York.
- June 1, 2005: Steve Shaw will be a moderator at the Defense Industry Initiative, Best Practices Forum in Washington, D.C.

RECENT SPEECHES & ARTICLES

- April 6, 2005: Steve Shaw spoke at the BAE Systems Ethics Conference in Annapolis, Maryland, and at the Lockheed Martin Ethics Conference in Bethesda, Maryland.
- April 1, 2005: Steve Shaw spoke at Crowell & Moring's Contracting Conference in Washington, D.C.
- March 1, 2005: GCR (Steve Shaw, Richard Pelletier, and John Polk) facilitated the DoD Fraud Procurement Working Group Conference in Orlando, Florida.
- February 17, 2005: Steve Shaw led a panel on contractor ethics at an NCMA Conference in Melbourne, Florida.
- February 15, 2005: Steve Shaw addressed the D.C. Bar at the Brown Bag Program on debarment.
- February 1, 2005: Richard Pelletier spoke at the Disputes, Protests, and Remedies Panel for the annual GCQ conference held at the Army-Navy Club in Washington, DC.
- December 9, 2004: Steve Shaw addressed debarment issues at Professors Nash and Cibinic's West Publishing Forum in Washington, D.C.
- December 6, 2004: John Polk taught classes on the False Claims Act and issues involving contractor employees in the workplace at Hanscom Air Force Base.



SUSPENSION & DEBARMENT IN A NUTSHELL

ACTIONABLE MISCONDUCT

Most suspensions and debarments are based on the commission of a crime or civil fraud, poor contract performance, or other serious misconduct showing that the contractor is not responsible.

Suspension

The government can suspend a contractor if the government has adequate evidence that the contractor engaged in the following conduct, as described in FAR 9.407-2(a):

- Commission of fraud or any crime in connection with obtaining, attempting to obtain or performing a public contract;
- Violating a federal or state antitrust law;
- Committing embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements, tax evasion or receiving stolen property;
- Violating the Drug Free Workplace Act of 1988;
- Intentionally affixing the "Made in America" inscription to products that were not made in America;
- Committing an unfair trade practice; or
- Committing any other act showing a lack of business integrity or honesty that affects the contractor's responsibility.

An indictment constitutes adequate evidence, FAR 9.407-2(b). However, an indictment is not a prerequisite, and the government can suspend a contractor even though there is no indictment.

Debarment based on conviction or civil judgment

The government can debar a contractor if the contractor has been convicted of, or adjudged civilly liable for the following misconduct, as described in FAR 9.406-2(a):

- Commission of fraud or any crime in connection with obtaining, attempting to obtain or performing a public contract;
- Violating a federal or state antitrust law;
- Committing embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements, tax evasion or receiving stolen property;
- Intentionally affixing the "Made in America" inscription to products that were not made in America; or
- Committing any other offense showing a lack of business integrity or honesty that affects the contractor's responsibility.

Fact-based suspension or debarment where there is no indictment, conviction or civil judgment



NELLIS AIR FORCE BASE, NV. Thunderbird solo pilots team up to perform their trademark calypso pass. The Thunderbirds fly the F-16 Fighting Falcon, a compact, multi-role fighter that is highly maneuverable and has a proven record in air-to-air combat and air-to-surface attack. (U.S. Air Force photo by Tech. Sgt. Sean M. White)

The government can also suspend or debar a contractor even though the contractor has not been indicted, convicted or adjudged civilly liable for the acts described above. For example, FAR 9.407-2(c) and FAR 9.406-2(c) permit the government to suspend or debar a contractor for any cause of a serious or compelling nature affecting the contractor's present responsibility. Similarly, FAR 9.406-2(b)(1)(i) permits the government to debar a contractor for failure to perform in accordance with the terms of a contract.

If there is a preponderance of evidence that the contractor has done any of the following, then the government can debar the contractor, even though there is no conviction or civil judgment:

If there is a preponderance of evidence that the contractor has done any of the following, then the government can debar the contractor, even though there is no conviction or civil judgment:

- Willful failure to perform in accordance with the terms of a contract;
- A history of unsatisfactory performance of one or more contracts;
- Violating the Drug Free Workplace Act of 1988;
- Intentionally affixing the "Made in America" inscription to products that were not made in America;
- Committing an unfair trade practice; or
- A determination by the Attorney General that the contractor is not complying with the Immigration and Nationality Act.

Because the government can debar for a history of

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LEGISLATIVE SUMMARY

Bill Num.	Name/Description	Summary	Status
H.R. 4394	Accountability and Responsibility in Contracting Act	To make ineligible for Federal contract awards any expatriated corporations and any companies that do business with, or own foreign subsidiaries that do business with, state sponsors of terrorism or foreign terrorist organizations.	Referred to the House Committee on Government Reform.
H.R. 4385		A bill to provide for the suspension from Federal procurement and nonprocurement activities of persons that have not paid a fine resulting from a violation of the Occupational Safety and Health Act of 1970 that causes the death of an employee. This bill would amend the FAR to include this provision suspending individuals who failed to pay OSHA fines.	Referred to the Committee on Education and the Workforce, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
H.R. 4387	Contractor Accountability Act	To extend military extraterritorial jurisdiction to cover not only personnel and contractor personnel of the Department of Defense, but also personnel and contractor personnel of any Federal agency or provisional authority supporting the mission of the Department of Defense overseas, and for other purposes.	Referred to the subcommittee on Crime, Terrorism, and Homeland Security.
H.R. 4390	MEJA Clarification Act	To extend the Military Extraterritorial Jurisdiction Act (MEJA) to provide for the arrest and commitment of contractor personnel who commit Federal offenses or war crimes while supporting the mission of the Department of Defense overseas.	Referred to the Committee on the Judiciary, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
S. 3286	Amendment to S. 3286	The amendment would prohibit federal government employees at and above the GS-12 level and military officers who served in a procurement capacity from working as an "employee, officer, director, or consultant" of a contract, for a two year period beginning on the date that their federal employment terminates.	The amendment was withdrawn from the Senate on June 23.
S. 2438	A bill to amend title 31, United States Code, to provide Federal Government employees with bid protest rights in actions under Office of Management and Budget Circular A-76, and for other purposes	Same as title	Read twice & referred to Committee on Governmental Affairs.

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LEGISLATIVE SUMMARY

Bill Num.	Name/Description	Summary	Status
H.R. 2767	Contractors Accountability Act of 2003	Refer to June 2004 Issue.	Same
H.R. 1348	Construction Quality Assurance Act	Refer to June 2004 Issue.	Same
H.R. 746	Responsibility in Federal Contracts Act	Refer to June 2004 Issue.	Same
H.R. 1218	A bill to require contractors with the Federal Government to possess a satisfactory record of integrity and business ethics	Refer to June 2004 Issue.	Same
S. 1072	Amendment to S. 1072	Refer to June 2004 Issue.	Same
S. 2023	A bill to limit Department of Defense (DoD) contracting with firms under investigation by the DoD Inspector General	Refer to June 2004 Issue.	Same

BOOK REVIEW

THE POST-TRUTH ERA: DISHONESTY & DECEPTION IN CONTEMPORARY LIFE

By John W. Polk, SAF/GCR

Fraud involves dishonesty, deception, lying. It is the opposite of truth. Now, we have a recently-published book in which the author asserts that lying has become so prevalent that we are living in the post-truth era. *In The Post-Truth Era: Dishonesty and Deception in Contemporary Life* (St. Martin's Press 2004), the author, Ralph Keyes, contends that deception has become the modern way of life. Once there was a boundary between truth and lies, but no more. In the post-truth era, deceiving others has become routine, a cultural habit. "High profile dissemblers compete for news coverage. From journalists like Jayson Blair and professors like Joseph Ellis to politicians (of all stripes), executives, and 'creative' accountants." "The emotional valence associated with deception has declined." We no longer tell lies. Instead, we "misspeak." We "exaggerate." We "exercise poor judgment." "The term 'deceive' gives way to the more playful 'spin.'" Instead of accusing people of lying, we say "they are in denial." Keyes

remarks that "Richard Nixon, the premier liar of modern times . . . went to his grave without ever confessing to more than errors of judgment." We invent all sorts of euphemisms to avoid the words lie or lying. According to the author, Churchill once referred to "terminological inexactitudes," but there are many other euphemistic expressions of modern vintage. We describe liars as people who are "economical with the truth," or as "someone for whom the truth is temporarily unavailable." Further, ethical issues are now treated therapeutically. Therapists encourage patients to create "useful myths." Liars are said to be "emotionally honest," even though lying.

Keyes is not so naïve as to contend that lying is a recent phenomenon. The Book of Genesis, for example, is chock full of stories of deception, the most elaborate being the fraud that Jacob and Rebekah perpetrated on Esau; and they got away with it with nary a peep from the Almighty. Jacob, the con artist, emerges the winner, the great historical link in the Jewish tradition, and Esau shuffles off to oblivion. Further, the ninth commandment has less to do with truth than with loyalty to the tribe. Consider the words of Exodus 20:16 carefully—"Thou shalt not bear false witness against thy neighbor." Don't lie to or about your neighbors, but if you are dealing with Philistines,

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BOOK REVIEW

THE POST-TRUTH ERA: DISHONESTY & DECEPTION IN CONTEMPORARY LIFE

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that's another matter altogether. Lying is not new, but Keyes contends that our contemporary attitude toward it is different. Indeed, our fundamental concept of the truth has changed. Truth is no longer clear, let alone absolute. We have begun to doubt that there is even such a thing as the truth. The intellectual backdrop of contemporary times is broadly called postmodernism. "To devout postmodernists, there is no such thing as literal truth, only what society labels as truth." Truth is a social construct that varies from society-to-society and from time-to-time. This is a far cry from Augustinian absolutes and Kantian imperatives, but is it all that far from Exodus 20:16? Keyes thinks it is far indeed, because of the prevalence of deceit within our culture.

How did we get to this point? Keyes cites the influence of Darwin, who recognized that nature does not give fig for the truth. Nature cares only about survival, and deceit is essential to survival, for people as well as animals. If fraud is natural, indeed mandatory for survival, then why worry about truth. But as Keyes recognizes, there is another important consideration. Man is a social creature, and since early times people intuitively realized that, notwithstanding the utility of deception when contesting living space with outsiders, deception within the community undermines social bonds and threatens the very existence of the community. Hence, the ninth commandment's admonition to be truthful within the neighborhood. Keyes believes that truth's diminished value is traceable in part to the flux of current society. People no longer live in close-knit communities with long historical memories in which every neighbor is a lie detector for every other neighbor. We move around a whole lot. Many of us by design change jobs every few years as we endeavor to climb the greasy pole of success. The path to the top is one of constant movement, and with each move there is the potential, and temptation, to recreate oneself. Nowhere is this more true than in America, as Keyes acknowledges, quoting one immigrant as saying, "to have a history in America, one had to make it up oneself."

Where are we headed in the post-truth era? Keyes is especially concerned with the impact of deception on public affairs generally and on the conduct of the government in particular. As Keyes points out, totalitarian regimes try to brainwash people into believing lies. Instead, people begin to doubt everything they are told. In time they assume that nothing their government tells them can be believed. Ultimately, they

don't lose just the capacity to assess the credibility of official pronouncements, they lose interest. This comment applies to democracies as well. Because a democracy can function only with an informed citizenry, a question worth pondering in the post-truth era is how much spin-doctoring can a democracy tolerate and still survive as a democracy?

FRAUD REMEDIES REFERENCE GUIDE

SAF/GCR recently published a Fraud Remedies Reference Guide discussing the elements of criminal and civil statutes relevant to prosecuting procurement fraud. The reference guide includes chapters on the role of the Acquisition Fraud Counsel, the preparation of fraud remedies plans, and the procedures for handling *qui tam* cases. It also contains an appendix with the revised and simplified format for fraud remedies plans. The Fraud Remedies Reference Guide can be found in the "Procurement Fraud" section of each web site. For example, the link to the AFNET version is here: <http://afnet.safgc.hq.af.mil/docs/04fraudremrefguide.pdf>.

GAO REVIEWS DRUYUN CONTRACT PROTESTS

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sufficient for the GAO to require the Air Force to demonstrate that Lockheed Martin was not prejudiced by Ms. Druyun's acknowledged bias. According to the GAO, the Air Force was unable to make such a showing, and the GAO sustained Lockheed Martin's protest. *Protest of Lockheed Martin Corp.*, B-295402, Feb. 18, 2005.

The GAO issued the C-130 AMP decision on February 24. The C-130 AMP protest was brought by three protesters: Lockheed Martin Aeronautic Company, L-3 Communications Integrated Systems, and BAE Systems Integrated Defense Solutions, Inc. Each of the protesters alleged that Ms. Druyun, in her role as the C-130 AMP source selection authority, had engaged in improper conduct in deciding

to award the C-130 AMP contract to Boeing. The GAO agreed and sustained the three protests. Noting that Ms. Druyun specifically admitted in her sentencing documents that at the time she was acting as the C-130 AMP source selection authority she was influenced by her perceived indebtedness to Boeing, the GAO concluded that the Air Force had failed to establish that the protesters were not prejudiced by Ms. Druyun's activities. *Consolidated Protests of Lockheed Martin Aeronautics Company, L-3 Communications Integrated Systems, and BAE Systems Integrated Defense Solutions, Inc.*, B-295401.1 - 3, Feb. 24, 2005.

The GAO has recommended that the Air Force take corrective action in both protests.



\$62 MILLION SETTLEMENT

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attorneys' fees were settled separately for \$27 million and are in addition to the \$62 million paid to the United States.

The government intervened in 2001. The claims were investigated by DCIS, with assistance from DCAA and DCMA. This is the largest False Claims settlement ever negotiated by the Chicago U.S. Attorney's Office. Assistant U.S. Attorney Linda Wawzenski represented the government, with the assistance of Douglas Campbell, AFMCLO-JAN, Wright-Patterson AFB.

For further information, see Fraud Remedies Update, March 7, 2005, on SAF/GCR's websites.

COURT DISMISSES CONTRACTOR'S SUIT...

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were dismissed for lack of federal jurisdiction, as the plaintiffs failed to name the United States as a defendant as required by the FTCA. The District Court dismissed American Floor's state tort claims ruling that the FTCA is the exclusive remedy against the federal government for this claim, and may only be made against the United States. Other defenses were not addressed by the court. Kudos to Assistant U.S. Attorney David Powell.

The views and opinions of the authors expressed herein do not necessarily state or reflect the official policy or position of the Department of the Air Force, Department of Defense, or United States Government.

SUSPENSION & DEBARMENT IN A NUTSHELL

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unsatisfactory performance of one or more contracts, this means that in appropriate circumstances, action can be taken against a contractor for a pattern of negligent performance on a single public contract. There is no need to show fraud or even reckless conduct.

Other serious cause —the catch-all provision

The government can suspend or debar a contractor based on "any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor." FAR 9.406-2 (c) ; FAR 9.407-2(c).

This provision provides wide latitude to the Air Force to determine whether a contractor's conduct requires suspension or debarment, and could even include conduct that is neither criminal nor related to a public contract. A history of unsatisfactory performance on private contracts, for example, could indicate a lack of present responsibility requiring debarment under this "other causes" provision.

This is an excerpt of "Suspension and Debarment in a Nutshell." To view the full article, go to:

http://afnet.safgc.hq.af.mil/sd_shaw_nutshell.htm

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